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March 2, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: *In the Matter of a National Broadband Plan for Our Future*, GN Docket No. 09-51.

Dear Ms. Dortch:

Today Bill Hegmann, Jim Frame, Regina McNeil and the undersigned from NECA met with Commissioner Baker and Christi Shewman, legal advisor; and separately with Commission Clyburn and legal adviser Angela Kronenberg, to discuss the Federal Communications Commission's National Broadband Plan. In particular, NECA discussed its historical role in helping to advance broadband deployment in rural areas as well as current concepts to advance rural broadband in the near and long term. NECA's history and these concepts are outlined in the attached documents.

This letter of notice of our *ex parte* presentation has been filed via the Commission's Electronic Comment Filing System in accordance with FCC rules. Questions regarding this meeting may be directed to my attention.

Sincerely,

A handwritten signature in black ink that reads "Joe A. Douglas". The signature is written in a cursive, flowing style.

Attachment

Cc: Commissioner Meredith Attwell Baker
Commissioner Mignon Clyburn
Angela Kronenberg
Christi Shewman



Rural Broadband Concepts

- Rural rate of return ILEC (RLEC) multiuse networks are an essential part of achieving broadband goals – currently providing broadband access to 92% of their customer base.
- Broadband funding in high cost areas should be limited to one fixed and one mobile broadband network (mobile is a complementary network).
- All fixed broadband networks should be at fiber to the home equivalent speeds as long term goal.
- Universal service contribution mechanism should be revised to a connections-based system that counts all telephone numbers and all other types of connections, including all broadband connections.
- New “Rural Broadband Network” funding mechanism should be designed to support full broadband transmission capabilities from the end user to the Internet backbone, including first mile, second mile, middle mile, and Internet connectivity costs.
- Under NECA’s concept new broadband fund would immediately include second mile, middle mile and related Internet connection costs in funding calculation with last mile funding included in the new fund calculation when a customer chooses a broadband-only connection (e.g., naked DSL). While customers continue with a combined voice/broadband service, existing loop cost recovery mechanisms (including local exchange service charges, subscriber line charges, high cost loop funding and interstate common line support) would continue. As mechanisms are put in place to support broadband services, existing voice-based programs would be phased down and could be simplified. This approach avoids rate shocks for rural customers still choosing voice/broadband services.
- Specific support amounts in rural RLEC areas would be determined by comparing the actual costs of providing end-to-end rural broadband network transmission services to an urban broadband cost benchmark.
- Entities receiving support in RLEC areas would continue to offer broadband transmission services on a Title II basis.
- ICC reform is necessary to advance future broadband deployment. Rates generally need to be lowered and unified across jurisdictions and technologies on a per company or rate band basis. Rates should not be set established at artificially low uniform rates as this would send wrong economic signals.
- RLECs should continue to have flexibility to meet customer needs for optional specialized and managed broadband services on a Title II wholesale basis.
- New rules should be adopted that enable rural broadband network providers access to non-Title II networks, Internet, and other content on terms and conditions equal to a “most favored” customer.
- The Commission should give consideration to the special needs of carriers seeking to provide broadband services in insular areas such as Hawaii and Alaska.

NECA Background, corporate structure

- NECA is a not-for-profit Delaware corporation.
- Created in 1983 by order of the FCC, it was formed under FCC rules by an ad hoc telephone industry committee.
- The Universal Service Administrative Company (USAC) is a wholly-owned subsidiary of NECA operating independent of and separate from NECA, with its own board of directors, executive management and staff. Under FCC rules, there is no oversight of USAC by NECA.

NECA Purpose

- NECA's purpose under FCC rules is to manage the access charge system created by the FCC at the divestiture of the former Bell Operating Companies from their parent, AT&T. This includes filing federal access tariffs and managing pool revenue distributions for companies who choose to participate in NECA's tariff.

Membership in NECA

- Under FCC rules all incumbent local exchange carriers are members of NECA; participation in NECA's tariff(s) and pooling arrangements is completely voluntarily
- Member companies participating in NECA's tariff and pooling arrangements sign an agreement certifying they will comply with all applicable FCC rules and NECA tariff/pooling requirements.

Governance and executive management

The NECA Board of Directors has 15 members. Ten Directors represent three membership divisions and five represent all members (outside directors). Federal Communications Commission Rules establish Board size and representative groupings.

The groupings are:

Subset 1. Bell Operating Companies. Two representatives

Subset 2. Other telcos with revenues of \$40 million or more. Two representatives.

Subset 3. All remaining telcos. Six representatives.

Outside Directors. Non-telco Directors representing all subsets. Five representatives.

Each subset nominates and elects its own representatives. Outside Directors are elected by the entire membership.

Officers

NECA's executive officers include its president and chief executive officer; vice president, general counsel & corporate secretary; vice president operations; and chief financial officer.

Operations

- NECA is headquartered in Whippany, New Jersey. Regional NECA offices operate in Chicago; Atlanta; Omaha; St. Louis; Denver; and Whippany, NJ. A government relations office is located in Washington, D.C.
- NECA employs approximately 270 people, nationwide. These staff are engaged in collecting and reviewing telephone company cost and demand data; forecasting interstate access demand and developing access rates; developing interstate access tariffs for submission annually to the FCC; managing monthly access charge settlement computations and distributions; collecting and submitting data to USAC for use in universal service programs; managing the interstate Telecommunications Relay Service fund; and representing NECA member company interests with respect to the access charge system before the FCC.

NECA Authority and Responsibility Under FCC Rules

47 CFR 69.601 *et. seq.*

GPO Website for CFR:

http://www.access.gpo.gov/nara/cfr/waisidx_02/47cfr69_02.html

[Also for your convenience, please refer to separate document provided for statute language from this Part.]

FCC Safeguards Proceeding

(Note: this proceeding examined ways to strengthen and safeguard the interstate access charge system, and included an investigation of NECA's responsibilities, authority under FCC rules, and administrative processes.)

Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Process, CC Docket No. 93-6, *Report and Order and Order to Show Cause*, 10 FCC Rcd. 6243 (1995) ("*Safeguards Order*")

Relevant language from Safeguards Order:

A. NECA's Overall Responsibilities

1. Background

36. In the Notice, we stated our expectation that NECA will make reasonable efforts to interpret our rules correctly and to implement those interpretations. We observed that, in the course of its operations, NECA receives much data that LECs must assemble to comply with our accounting, separations, and access charge rules. We recognized that NECA cannot review each LEC submission in minute detail and that NECA has adopted review standards, methods, and procedures designed to detect LEC noncompliance. We stated that if, as a result of its review, NECA concludes that LEC data do not comply with our rules, NECA must correct revenue requirement and revenue distribution computations that include the noncompliant data.^[FN79]

2. Comments

37. Several commenters dispute our statement that NECA must correct LEC-submitted data in its revenue requirement and revenue distribution computations. Bell Atlantic and SWBT contend that our statement must be rejected because it delegates regulatory authority to NECA, in violation of both our purpose in creating NECA and LEC rights to have their rule interpretations reviewed by the Commission.^[FN80] ICORE argues that allowing NECA to correct data that LECs submit assumes without adequate foundation that NECA's staff is more knowledgeable than highly skilled, well-trained, and conscientious LEC personnel and the consulting firms upon whom the LECs rely to develop their submissions to NECA.^[FN81] NTCA asserts that NECA, NECA pool participants, and other LECs should all be allowed to weigh the advantages and disadvantages of different interpretations of Commission rules and implement the ones that most benefit their own collective interests.^[FN82] GCI, however, contends NECA must exercise its own independent interpretative judgment and implement that interpretation.^[FN83]

3. Discussion

38. We reiterate our requirement that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. The arguments against that requirement assume a role for NECA different from that which the Commission has prescribed for NECA ever since its creation. Prior to divestiture, AT & T had acted as the tariff filing agent for the BOCs and other LECs, and had distributed revenues among those LECs using its “Division of Revenues” and settlements processes. When AT & T agreed to divest the BOCs, the Commission recognized that it would be inappropriate for AT & T to continue these roles in a post-divestiture environment. The Commission proposed a LEC association to develop interstate access tariffs and administer interstate access revenue pools. The Commission recognized that this association would require:

[B]oth a governing board to establish policy and a staff to implement that policy and to perform the day-to-day administration of access charges. The access plan we ultimately adopt would, of course, determine the nature of these policies and administrative tasks. The governing board might, in appropriate circumstances, also review staff actions challenged by individual members.^[FN84]

39. Thereafter, the Commission mandated the association's creation, and stated that it would “prepare and justify the [access charge] tariffs on behalf of” pool participants and “compute the distributions each participant is entitled to receive from the pool.”^[FN85] The Commission required that the tariffed charges “be computed, assessed, and collected and [that] revenues from such charges ... be distributed as provided” in the access charge rules.^[FN86] These requirements remain in effect today.^[FN87]

40. This history makes clear that when the Commission created NECA, it contemplated that NECA would implement the access charge system in accordance with Commission rules. To prepare access charge tariffs, NECA must use data that complies with our accounting, cost allocation, jurisdictional separations, and access charge rules. To justify its tariff filings, NECA must believe in good faith that the data in the filings comply with those rules. To distribute access charge revenues, NECA also must use data that comply with those rules.

41. Some commenters would have us depart from this structure so that LECs that disagree with NECA's rule interpretations could have their own interpretations incorporated into NECA's tariff filings or receive revenue based on those interpretations. This we refuse to do for several reasons. First, it would impose unnecessary burdens on the tariffing process. NECA's CL tariff filings, for instance, reflect data from over 800 LECs. Allowing those filings to reflect multiple interpretations of Commission rules would needlessly complicate our review and interested parties' review processes.

42. Second, the data each LEC reports to NECA affect not only its own earnings, but also the earnings of other carriers. For instance, because NECA distributes CL revenue based on each pool participant's CL costs,^[FN88] each increase in an individual participant's reported costs reduces each other participant's CL revenue, at least temporarily. It would be unfair to those participants' that implement NECA's rule interpretations to allow more aggressive participants to increase their revenue at the group's expense.

43. Third, although LECs reduce the amounts they receive from NECA when they reduce their reported CL costs, experience has shown that such reductions could be used to disguise improper concerted action. To ensure that this does not happen, we decline to allow NECA to depart from its own good faith interpretations of our rules without Commission approval.

44. We reject the argument that requiring NECA to correct inaccurate data improperly delegates regulatory authority to NECA. We retain our full authority to review NECA's tariff filings in accordance with constitutional and statutory standards. LECs that disagree with NECA's interpretations of our rules are free to present their arguments to the Commission, either in comments on those filings or petitions for declaratory rulings.^[FN89] Absent Commission action to the contrary, NECA must implement its rule interpretations.

FN79 Notice, 8 FCC Rcd at 1507, paras. 25–26.

FN80 Bell Atlantic Comments at 3, citing MTS and WATS Market Structure, Memorandum Opinion and Order, CC Docket No. 78–72, Phase I, 97 FCC 2d 682, 754–55, para. 180 (1983) (MTS and WATS Reconsideration Order); SWBT Comments at 5–6.

FN81 ICORE Comments at 8–9.

FN82 NTCA Comments at 18.

FN83 GCI Comments at 4.

FN84 MTS and WATS Market Structure, Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135, 150, para. 52 (1982) (internal citation omitted).

FN85 Id. at 333, para. 339.

FN86 See MTS and WATS Order, 97 FCC 2d at 344 (adopting Section 69.1(b) of the Commission's rules).

FN87 See 47 C.F.R. § 69.1(b).

FN88 See *supra*, n. 2.

FN89 For this reason, the above structure does not constitute an improper delegation of governmental power to NECA. See MTS and WATS Reconsideration Order, 97 FCC 2d at 754–55, para. 180.

Access Charge Revenue Pooling

Long distance companies pay "access charges" to use local telephone companies' networks. We manage the distribution of these interstate access revenues through "revenue pooling." Over a thousand member companies voluntarily participate.

Here's how it works:

We prepare a tariff that includes averaged rates - based on the participating companies' costs of providing interstate access service and forecasted demand quantities

- We file the tariff with the FCC
- Participating companies bill long distance companies at the pool tariff rates
- Participating companies submit the revenues and individual costs to us
- We reimburse the companies for their individual costs
- We divide any remaining access revenues among participants according to each company's share of pool investment as their return on net investment.

Two choices for pooling

NECA members participate in revenue pooling as either cost companies or average schedule companies.

- **cost companies** receive pool revenues (settlements) for interstate telecommunications services based on their actual interstate investment and expenses, calculated each year from detailed cost studies.
- **average schedule** companies have their pool "settlement" determined based on a series of statistical formulas. For qualifying small companies, this option avoids the expense of preparing cost studies.

Calculation of average schedule formulas

Each December 31st, we submit modifications to prior year average schedule formulas for approval by the FCC. We conduct an extensive annual study to determine what revisions are warranted. This study involves:

- selecting a statistical sample of cost and average schedule companies
- collecting data from these companies
- developing mathematical cost allocation models
- deriving forecasting factors and formulas

With these formulas, we compute average schedule company settlements that approximate amounts that would be received by a cost company.

Reasons for Common Tariffs and Pooling

- The purpose of interstate access charge pooling is to help keep telephone service rates and service for rural customers comparable with customers in more urban places. Pooling helps smaller, typically rural telephone companies spread costs and share investment risk. In combination with federal and state universal service programs, this process has helped steadily advance telecommunications services nationwide.
- Pooling helps companies recover from the effects of potentially disruptive events, such as major storms that damage infrastructure, by spreading the economic effects of these events across all pool members. It also provides financial stability and can send positive signals to potential creditors and investors about the viability of small rural telecommunications companies.
- Participating in NECA's tariff/pooling arrangement affords economies of scope and scale to small telcos. These companies typically do not have the resources necessary to prepare, file and defend complex interstate tariffs.
- The FCC benefits from the NECA tariff process in that its staff need only review one uniform interstate access tariff covering the services of some 1100 carriers, rather than separate tariffs from each.
- Interstate access customers benefit because they need look to only one tariff for obtaining access services in any of approximately 1100 separate service territories nationwide.